REMARKS

This submission is in response to the non-final Office Action dated January 5, 2007. Claims 1-30 are currently pending. Consideration of the above-identified application, in view of the following remarks, is respectfully requested.

Restriction Requirement

The Examiner has required restriction of the claims to one of the following three Groups under 35 U.S.C. § 121:

Group I: Claims 1-17, drawn to an anti-irritant composition comprising two or more water soluble, organic salts of zinc;

Group II: Claim 18, drawn to an anti-irritant composition comprising a synergistic amount of chlorhexidine gluconate, benzalkonium chloride and incroquat, and further comprising other inactive ingredients; and

Group III: Claims 19-30, drawn to a method of decreasing irritation of the skin or mucous membranes comprising apply the anti-irritant composition of claim 1.

The Applicants hereby elect, with traverse, to prosecute the claims of Group I (claims 1-17) drawn to an anti-irritant composition. Although Applicants are making the above election to be fully responsive to the Restriction Requirement, Applicants respectfully traverse the Requirement and reserve the right to petition under 37 C.F.R. § 1.144. In particular, Applicants respectfully request reconsideration and withdrawal of the Restriction Requirement to allow prosecution of all claim groups in the present application, for the reasons provided below.

Rejoinder of Groups I and III

The Examiner alleges that Groups I and III are distinct as product and process of use. According to the Examiner, each named Group is distinct in that the process for using the product can be practiced with a different product, and that the product can be used in a different process.

Under 35 U.S.C. §121, "two or more independent and distinct inventions... in one application may... be restricted to one of the inventions". However, even with patentably distinct

inventions, restriction is not required unless one group has a separate classification, separate status in the art, or different field of search. In the present case, both groups call for same anti-irritantcompositions of Group I. Therefore, Applicants submit that the search would not require additional burden since the antimicrobial compositions are already elected for the search. Accordingly, Applicants respectfully request that Group I be rejoined with Group III for examination.

Applicants respectfully reserve their right to rejoinder of the non-elected claims prior to a notice of allowance for the elected claims of Group I in accordance with the guidance given by the Commissioner of Patents and Trademarks in 1184 OG 86. See also *In re Ochiai*, 37 USPQ2d 1127 (Fed. Cir. 1995) and *In re Brouwer*, 37 USPQ2d 1663 (Fed. Cir. 1996), where the Federal Circuit held that where an otherwise conventional process was patentable if it made or used novel nonobvious products in the claimed processes. See also MPEP 821.04(b), which states,

> ... if applicant elects a claim(s) directed to a product which is subsequently found allowable, withdrawn process claims which depend from or otherwise require all the limitations of an allowable product claim will be considered for rejoinder. All claims directed to a nonelected process invention must depend from or otherwise require all the limitations of an allowable product claim for that process invention to be rejoined.

Applicants specifically reserve the right to pursue all non-elected subject matter in one or more related applications.

Species Election

The Examiner has further required election of a species of one of each six species groups, if no generic claim is finally held allowable. Specifically, the Examiner requires a species election in each of the following designated species groups:

(1) Claim 5: emollients;

(2) Claim 7: gelling or thickening agents;

(3) Claims 8-9: silicone polymers;

(4) Claims 10-11: antimicrobial agents;

(5) Claims 12-13: antioxidants and surfactants; and

(6) Claim 16: natural or synthetic compounds.

Applicants hereby elect the following species, with traverse:

(1) claim 5 emollient: Glucam P-20;

(2) claim 7 gelling or thickening agent: cationic hydroxy ethyl cellulose;

(3) claims 8-9 silicome polymer: dimethiconal fluid in dimethicone;

(4) claims 10-11 antimicrobial agent: benzalkonium chloride;

(5) claims 12-13 antioxidant and surfactant: surfactant; and

(6) claim 16 compound: farnesol.

Applicants make these elections of species to be fully responsive to the species election requirement. Product claims 1-13 and 15-17 read on these species. The Examiner states that the generic claims are claims 5, 7-13 and 16.

It is Applicants' understanding that, under 35 U.S.C. § 121, if an election of a single species for prosecution on the merits is required, the claims will be restricted if no generic claim is finally held allowable. Pursuant to MPEP 809.02(a) upon allowance of a generic claim, Applicants will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 C.F.R. § 1.141. Accordingly, Applicants submit that upon allowance of the generic claims, all the remaining non-elected claims must be considered.

In view of the above amendments and remarks, it is respectfully requested that the application be considered for substantive examination. If there are any other issues remaining which the Examiner believes could be resolved through either a Supplemental Response or an Examiner's Amendment, the Examiner is respectfully requested to contact the undersigned at the telephone number indicated below. Applicants believe no fee is due at this time. However, if any fees are required, the Commissioner is authorized to charge such fee to Deposit Account No. 02-4377.

Dated: February 2, 2007

Respectfully submitted,

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